

Attorney Docket No. 10393.00

Customer No. 37833

Confirmation No. 5975

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE PATENT APPLICATION OF:

APPLICANT: LASZLO SICHTNIK

APPL. NO. : 10/614,298

ART UNIT : 1623

FILED

: JULY 8, 2003

**EXAMINER: D. KHARE** 

TITLE

: EAR AND WOUND TREATMENT

MAIL STOP RESPONSE COMMISSIONER FOR PATENTS ALEXANDRIA, VA 22313-1450

## RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In the Office Action dated February 26, 2004, the Examiner required restriction under 35 U.S.C. § 121 prior to an examination on the merits of the above-identified application. The separate inventions identified by the Examiner are as follows:

- I. Claims 14-29, drawn to a pharmaceutical composition.
- II Claims 1-10, drawn to a method of using the composition of Group I.
- III. Claims 11-13, drawn to an apparatus for administering a pharmaceutical powder composition.

The Examiner states that the inventions of Groups I and II are related as product and method of use. The inventions of Groups I and III, and Groups II and III are asserted to be unrelated to one another. In order to establish that the separate inventions of Groups I and II are distinct, the Examiner

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asserts that the method of Group II can be practiced with a product materially different from that of

Group I.

In compliance with the Examiner's requirement, Applicant provisionally elects with traverse for

further prosecution the product defined by Claims 14-29 (designated as Group "I").

Notwithstanding the propriety of the restriction requirement for examination purposes, it should

be pointed out that such a requirement is discretionary on the part of the Examiner. Further, the Examiner

has failed to provide an example of "a materially different product" that can be used to practice the

method of Group II and therefore does not meet the criteria for distinctness as set forth in MPEP

806.05(h). Moreover, it would appear that a search and examination of the entire application can be

conducted without a serious burden on the Office.

Therefore, it is respectfully requested that the Examiner withdraw the restriction requirement and

issue an action on the merits of the claimed embodiments presently in the application. Alternatively,

should the Examiner maintain the requirement, Applicant awaits a complete action on the merits of the

elected subject matter.

Respectfully submitted,

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